

27 MAR 2008

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KALOW & SPRINGUT LLP
488 MADISON AVENUE
19TH FLOOR
NEW YORK NY 10022

In re Application of
Kluge et al.
Application No.: 10/593,986
PCT No.: PCT/EP05/03080
Int. Filing Date: 23 March 2005
Priority Date: 27 March 2004
Attorney Docket No.: UMICORE 0175-US
For: Nitrogen Oxide Storage Material And Nitrogen
Oxide Storage Catalyst Produced Therefrom

DECISION

This is in response to the petition under 37 CFR 1.182 filed on 19 March 2008.

DISCUSSION

In a Decision mailed on 17 September 2007, the declaration filed on 28 August 2007 was not accepted, without prejudice, because

it nominates “Juliane KLUGE” in place of “THEIS, Juliane” who was named in the published international application. In that this is clearly more than a mere typographic error or phonetic misspelling of applicant’s name, a proper petition under 37 CFR 1.182 (including the requisite \$400.00 petition fee) is required to resolve the discrepancy in the nominated inventive entity. Such a petition should include, if appropriate, a statement by the inventor and any other individual(s) having first-hand knowledge of the specific circumstances concerning how and when the error was made and discovered, and must also state (if appropriate) that the error was inadvertent and made without deceptive intent. See MPEP § 605.04(b) and MPEP § 201.03(b). Alternatively, petitioner may wish to seek relief under 37 CFR 1.497(d) in the event that the inventive entity is sought to be changed.

It is noted that the declaration document filed on 28 August 2007 is defective for the further reason that it includes un-initialed alterations to the “Residence Address” information pertaining to Markus KOGEL.

In response, petitioner has provided a “Declaration of Juliane Kluge” in which Ms. Kluge explains her name change due to marriage. In view of her explanation, it would be appropriate to accept her name as Kluge on an acceptable declaration of inventorship.

Counsel’s attention is respectfully drawn to MPEP 605.04(c), which indicates in part that “Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name... If an application data sheet is not submitted, the petition may still be granted, but the patent may not reflect the correct spelling of the inventor’s name.”

The instant petition is accompanied by a new declaration of inventorship. Review of that declaration reveals that it names only inventors Kluge and Kogel, rather than the entire inventive entity. Attention is drawn to MPEP 201.03, which explains in part that "An oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity." The declaration filed on 19 March 2008 is defective in view of this policy, because it fails to nominate the entire inventive entity. In order for the petition to be granted, an acceptable declaration document is required.

DECISION

The petition under 37 CFR 1.182 is **DISMISSED**, without prejudice.

The \$400.00 petition fee is being charged to Deposit Account no. 11-0171, as authorized by the petition.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT** of this application with respect to the national stage in the United States.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459